HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

And
HON'BLE SHRI JUSTICE G.BHAVANI PRASAD

W.A. NO.461 OF 2006

-

Between:

Budagam Srinivas

..... Appellant

AND

T.Chittaiah and 16 others.

.....Respondents

::JUDGMENT::

Counsel for the Appellant : Sri P.V.Ramana

Dated 27/4/2006

Per Sri G.S.Singhvi, CJ

This appeal is directed against order dated 25.4.2006 passed by the learned Single Judge in WPMP No.11218 of 2006 (W.P.No.3709 of 2006), whereby she refused to recall order dated 10.3.2006 passed in WPMP No.4621 of 2006.

A perusal of the record shows that Writ Petition No.3709 of 2006 filed by Sri T. Chittaiah (respondent No.1 herein) for quashing G.O.Ms.No.38 dated 17-2-2006 was dismissed as withdrawn by the learned Single Judge on 23-3-2006. On the next day i.e., 24-3-2006, the learned Single Judge entertained WPMP No.7678 of 2006 and WPMP (SR) No.31200 of 2006 filed by respondent No.1 and restored the writ petition. Thereafter, the appellant and 11 others filed WPMP No.11218 of 2006 for recall of interim order dated 10-3-2006 passed in WPMP No.4621 of 2006 whereby the learned Single Judge suspended the operation of G.O.Ms.No.38 dated 17-2-2006. The principal ground on which the appellant and 11 others sought vacation of interim order dated 10-3-2006 was that respondent No.1 had played fraud with the Court.

After hearing the counsel for the parties, the learned Single Judge dismissed WPMP

No.11218 of 2006 by recording the following observations:

> "The petitioners herein who are respondents 3 to 16 in the writ petition filed this petition to recall the order dated 10-3-2006 in WPMP No.4621 of 2006 on the ground that the said order having been obtained by playing fraud on the court cannot be continued any longer.
>
> Though this Court, in the order dated 24-3-2006 expressed prima facie opinion that the signatures of the petitioner on the affidavit and vakalat filed in the main writ petition did not tally with the signatures in the application for restoration, the report submitted by the Registry shows that the petitioner – Sri T. Chittaiah identified his signatures on the affidavit and vakalat in the main writ petition as that of his signatures.
>
> In the circumstances, it is premature to conclusively express any opinion as to the alleged forgery and therefore it would not be appropriate to record any finding at this stage that the interim order dated 10-3-2006 was obtained by playing fraud on the Court. Hence, I am not inclined to recall the order in WPMP No.4621 of 2006."

We have heard Sri Ramana at some length and perused the record. In our opinion, the order under challenge does not suffer from any patent legal infirmity and, therefore, we do not find any valid ground to entertain the appeal, more so because the learned Single Judge has already given liberty to the appellant and others to file fresh application for vacating the ad interim order dated 10.3.2006 passed in Writ Petition No.3709 of 2006.

With the above observations, the appeal is dismissed. However, we reiterate the liberty given to the appellant for filing fresh application for vacating the ad interim order. We also give liberty to the appellant to raise all legally permissible objections for contesting the main petition as well as ad interim order.

G.S.SINGHVI, CJ

G.BHAVANI PRASAD, J

Msv / svs